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November 12, 2013

Mr. Mark Langer, Clerk  
U.S. Court of Appeals, D.C. Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, NW  
Washington, D.C. 20001

Re: Fed. R. App. P. 28(j) Letter—*Aamer v. Obama*, No. 13-5223

Dear Mr. Langer:

We write to address new authorities that have appeared since oral argument:

1. Columbia University Institute on Medicine as a Profession, *Ethics Abandoned: Medical Professionalism and Detainee Abuse in the "War on Terror"* (November 2013), <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=4&ved=0CDkQFjAD&url=http%3A%2F%2Fwww.imapny.org%2FFile%2520Library%2FDocuments%2FIMAP-EthicsTextFinal2.pdf&ei=AFGBUpKhKYnDigKDx4CQBA&usg=AFQjCNHglIdEgfCLuAqU-QmUvOe34Nhq-ag>.

This report describes differences between the Bureau of Prison and Guantánamo protocols on force-feeding of hunger-striking inmates. Under the Bureau of Prison protocols: (1) only a physician may order force-feeding; (2) force-feeding may be ordered only if the physician determines that the inmate's life or health will be threatened if treatment is not initiated immediately; (3) force-feeding is not initiated at the inception of a hunger strike and in one case was not considered for six weeks; and (4) restraint chairs are intended only for short-term use and there is no provision for their routine use in force-feeding. *Ethics Abandoned* at 107-08; see also Federal Bureau of Prisons, Program Statement P5562.05, ¶ 10 (July 29, 2005).

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In contrast, under the Guantánamo protocols: (1) the JTF-GTMO Commander decides whether to order force-feeding; (2) force-feeding may be ordered not only where there is an imminent danger to health but also where a hunger strike is prolonged or the detainee has a pre-existing comorbidity or is below 85% of ideal body weight; (3) force-feeding may be initiated immediately and is routinely initiated after 21 days; and (4) restraint chairs are used routinely and long-term. Joint Task Force Guantánamo Bay, Cuba, Joint Medical Group, *Medical Management of Detainees on Hunger Strike* 4-5, 18 (Mar. 5, 2013).

This point is pertinent to Judge Griffith's inquiry at oral argument whether JTF-GTMO is "using protocols established by the Bureau of Prisons and used throughout the Federal Prison System." Tr. 14. It demonstrates a need for further litigation below on the merits of JTF-GTMO's claim that it is following the Bureau of Prisons protocols.

2. *Gilardi v. Department of Health and Human Services*, 2013 WL 5854246 (D.C. Cir. Nov. 1, 2013).

This case holds that a "person" within the meaning of the Religious Freedom Restoration Act includes "an individual human being." *Gilardi*, 2013 WL at 5854246 \*6.

Respectfully submitted,

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/s/

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**REPRIEVE**

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/s/

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## CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Signature: s/ Jon B. Eisenberg